

**CABINET MEMBER HIGHWAYS, TRANSPORT AND WASTE
COUNCILLOR Dr Mark McClenad**

HIGHWAYS & TRANSPORT

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PROPOSED APPLICATION TO STOP UP HIGHWAY AT IMBER ROAD, BRATTON

Purpose of Report

- 1 To ask the Cabinet Member to consider whether the Council should grant a request to apply to the magistrates' court for an Order stopping up part of the highway at Imber Road, Bratton on the ground that it is unnecessary for public use or any other highway-related purpose.

Relevance to the Council's Business Plan

- 2 As part of the Council's drive for strong communities, people in Wiltshire are encouraged to take action on what is best for their own communities. It also feeds into the aim of being an innovative and effective council as part of its focus on generating income by adopting a more commercial approach in what we do.

Main Considerations for the Council

- 3 Case law has clarified that in deciding whether to make an application to stop up highway (including highway rights for varying categories of user), the Highway Authority must consider all the factors which would be relevant to the consideration by a Magistrates' Court of whether an Order should be made. As well as whether the highway is needed for passing and repassing, issues such as safety, e.g. for visibility splays, potential development access or refuges for pedestrians, should also be considered.
- 4 The central question to be addressed is: what function is performed by the relevant part (or right) of the highway and whether it is unnecessary for that function to be performed by that part or the whole of the highway. If it is unnecessary, it must also be considered whether there are any other reasons why a stopping-up application should not be made.

Background

5. The area of land concerned is not in registered ownership; the adjacent land to the north is owned by Mr. Henry Pelly of Luccombe Mill.

6. Under the Highways Act 1980, Magistrates' Courts have a power to authorise the stopping up or diversion of highway. Section 116 (1)-(4) provides as follows:
- (1) Subject to the provisions of this section, if it appears to a magistrates' court after a view, if the court thinks fit, by any two or more of the justices composing the court, that a highway (other than a trunk road or a special road) as respects which the highway authority have made an application under this section –*
- (a) is unnecessary, or**
(b) can be diverted so as to make it nearer or more commodious to the public,
The court may by order authorise it to be stopped up, or as the case may be, to be so diverted.
- [sub-section 2 has been repealed]
- (3) If an authority propose to make an application under this section for an order relating to any highway (other than a classified road) they shall give notice of the proposal to –*
- (a) if the highway is in a non-metropolitan district, the council of that district; and*
(aa) if the highway is in Wales, the Welsh council for the area in which it is situated if they are not the highway authority for it; and
(b) if the highway is in England, the council of the parish (if any) in which the highway is situated or, if the parish does not have a separate parish council, to the chairman of the parish meeting; and
(c) if the highway is in Wales, the council (if any) of the community in which the highway is situated;
and the application shall not be made if within two months of the date of service of the notice by the authority notice is given to the authority by the district council [or Welsh council] or by the parish or community council or, as the case may be, by the chairman of the parish meeting that the council or meeting have refused to consent to the making of the application.
- (4) An application under this section may be made, and an order under it may provide, for the stopping up or diversion of a highway for the purposes of all traffic, or subject to the reservation of a footpath, bridleway or restricted byway.*
7. Bratton Parish Council has consented to the proposed application and a copy of its consent is shown at **Appendix 2**. The local member, Councillor Suzanne Wickham has been consulted and does not object.
8. Should the application be made and granted, the public would no longer have the right to pass and repass along the section of highway concerned and the Council would no longer be responsible for maintaining it. The area has been inspected every six months and there have not been any recent repairs.
8. Mrs. Madgwick, the Council's Definitive Map and Highway Records Manager, does not support the proposal and has provided the photographs at **Appendix 3** to illustrate her view. The first photograph shows the site before the laurel hedge was planted, with the others taken after planting on the part of the highway which would be included in this proposed application. Mrs. Madgwick asserts that Mr. Pelly has removed the Council's grit bin, obscured the statutory undertakers' apparatus and moved a footpath sign.

9. In Mrs. Madgwick's view, the hedge covers a significant part of the grass verge and restricts visibility from the junction of Bratton Footpath 42 and the road. The road is narrow and provides a link to the wider rights of way network. The verges provide a refuge for people (especially for horse riders) when traffic passes. With the laurel hedge in this position and the wider highway unavailable, this refuge is no longer available. Additionally, Mrs. Madgwick asserts that the repositioning of the footpath sign now represents a potential danger to passing vehicles, especially in the dark. She has also noted that the agreement by the requester to trim the new hedge to preserve the verge for pedestrians may not extend in perpetuity. In her view, to proceed with an application would be counter to the Council's duty to assert and protect the rights of the public to the use and enjoyment of highway.

9. An objection has been received from Mr. Cockerton, which is shown at **Appendix 4**. There is a degree of overlap with the issues raised by Mrs. Madgwick, including the available width of highway. Officers have noted that there are a number of misapprehensions contained within Mr. Cockerton's comments, including the assertion that Mr. Pelly has committed theft and that the land concerned is owned by the Council. He refers to both a stopping-up and a diversion of the highway; only the latter has been requested. Mr. Cockerton has expressed concerns arising from the presence of British Telecom and Wessex Water apparatus; however, neither organisation objects to the proposed application.

10. Mr. Pat Whyte is the Area Highway Engineer responsible for the Bratton area and accordingly responsible for the Council's response to the request for a stopping-up application, prior to determination by the Cabinet Member. He has visited the site and reviewed the comments made by both Mrs. Madgwick and Mr. Cockerton. The photographs at **Appendix 5** refer and the available widths along this section of highway are shown at **Appendix 6**. In Mr. Whyte's judgment, should the proposed application be made and granted, the remaining widths of verge would be insufficient for non-vehicular users, i.e. pedestrians and horse-riders. Accordingly, he is not satisfied that the section of highway is unnecessary for public use or any other highway-related reason. He does not therefore support this proposal for the Council to make the proposed application.

Safeguarding Considerations

11. There are no relevant safeguarding considerations.

Public Health Implications

12. There are no relevant public health implications.

Environmental Impact of the Proposal

13. There is no negative environmental impact to the proposal.

Equalities Impact of the Proposal

14. Officers consider that there is no equalities impact of the proposal.

Risk Assessment

15. Officers are concerned that if the application were to be made and granted, the remaining width of highway verge would have a negative impact on the safety of non-vehicular highway users.

Financial Implications

16. Mr. Henry Pelly has agreed to meet the legal costs of an application. Whether or not one proceeds, he will still be liable for preparatory costs. Accordingly, officers are satisfied that there will not be a negative financial impact upon the Council.

Legal Implications

17. As highway authority, the Council has a discretionary power, rather than a duty, to make such applications.
18. If an application is not made or if one is made and the Magistrates are minded not to make the Order, Wiltshire Council would continue to have a legal responsibility for the maintenance of the highway concerned.

Options Considered

19. The Cabinet Member for Highways and Transport may resolve to:
 - (i) Refuse to give consent to the application in which event, reasons should be given for doing so.
 - (ii) Consent to the application.

Reason for Proposal

20. The Area Highway Engineer has considered the proposal and reviewed the objections raised. He considers that the application should not proceed as the section of highway is necessary for public use.

Proposal

21. It is proposed that the Cabinet Member adopt the option at 19(i) above.

The following unpublished documents have been relied on in the preparation of this Report: n/a